Office-Supreme Court, U.S.
FILED
FEB 18 1983
ALEXANDER L. STEVAS,
CLERK

No. 81-1859

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

RALPH LAFAYETTE,
Respondent.

On Writ of Certiorari to the
Appellate Court of Illinois,
Third Judicial District

BRIEF OF THE CALIFORNIA STATE PUBLIC DEFENDER AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

QUIN DENVIR
State Public Defender of California
GEORGE L. SCHRAER
Deputy State Public Defender
Counsel of Record for Amicus Curiae
1390 Market Street, Suite 425
San Francisco, California 94102
Telephone: (415) 557-1468
Attorneys for Amicus Curiae

RALPH H. GOLDSEN
Deputy State Public Defender
Of Counsel

TABLE OF CONTENTS

Page

Interest of Amicus Curiae and Consent 1

Summary of Argument 2

Statement 3

Argument:

I. The search incident to arrest exception to the warrant requirement does not apply to the search of respondent's shoulder bag, since the shoulder bag was not immediately associated with respondent's person, and since a search incident to arrest of such objects may not lawfully be remote from the time and place of arrest 4

A. The search of the shoulder bag was impermissible under *United States* v. *Chadwick* 5

B. The court's ruling should preclude delayed searches of all repositories of personal effects, including wallets and purses 13

II. Since it furthers both the purposes of inventory searches and the privacy interests protected by the Fourth Amendment to inventory repositories of personal effects as a unit, their contents may be examined only where the circumstances indicate that inventorying as a unit would not adequately serve the purposes of inventory searches 18

Conclusion 30

TABLE OF AUTHORITIES

Cases

Page

Abel v. *United States*, 362 U.S. 217 (1960) 12, 13
Agnello v. *United States*, 269 U.S. 20 (1925) 17
Arkansas v. *Sanders*, 442 U.S. 753 (1979) 17, 19, 22
Bradford v. *State*, 401 N.E. 2d 77 (Ind.App.1980) 11, 27
Boulet v. *State*, 109 Ariz. 433, 511 P.2d 168 (1973) 28
Cady v. *Dombrowski*, 413 U.S. 433 (1973) 7
Chambers v. *State*, 422 N.E.2d 1198 (Ind.1981) 9, 11
Chimel v. *California*, 395 U.S. 752 (1969) 5, 6
City of Danville v. *Dawson*, 528 S.W.2d 687 (Ky.1975) 27
Commonwealth v. *Timko*, 491 Pa.32, 417 A.2d 620 (1980) 27
Dearing v. *State*, 393 N.E.2d 167 (Ind.1979) 28
Dyke v. *Taylor Implement Co.*, 391 U.S. 216 (1968) 7, 9
Hamby v. *Commonwealth*, 222 Va. 257, 279 S.E.2d 163 (1981) 28
Harris v. *United States*, 390 U.S. 234 (1968) 14
Herb v. *Pitcairn*, 324 U.S. 117 (1945) 5
Hicks v. *State*, 398 So.2d 1008 (Fla.App.1981) 29
Hinkel v. *Anchorage*, 618 P.2d 1069 (Alaska 1980) 12
John v. *Paullin*, 231 U.S. 583 (1913) 5
Johnson v. *State*, 413 N.E.2d 335, (Ind.App.1980) 11
Katz v. *United States*, 389 U.S. 347 (1967) 5
Liles v. *State*, 375 So.2d 1094 (Fla.App.1979) 12
Matter of B.K.C., 413 A.2d 894 (D.C. 1980) 11
Michigan v. *Tyler*, 436 U.S. 499 (1978) 5
Mincey v. *Arizona*, 437 U.S. 385 (1978) 5
Mozzetti v. *Superior Court*, 4 Cal.3d 699, 94 Cal.Rptr. 412, 484 P.2d 84 (1971) 26
New York v. *Belton*, 453 U.S. 454 (1981) ..... *passim*
Obermeyer v. *State*, 625 P.2d 95 (Nev.1981) 27
Oregon v. *Kennedy*, ___ U.S. ___, 72 L.Ed.2d 416 (1982) 15
People v. *Bayles*, 82 Ill.2d 128, 44 Ill. Dec. 880, 411 N.E.2d 1346 (1980) *cert. denied*, 453 U.S. 923 (1981) 23, 25, 27
People v. *Bean*, 107 Ill.App.3d 662, 63 Ill. Dec. 373, 437 N.E.2d 1295 (1982) 13, 27, 28
People v. *Counterman*, 192 Colo. 152, 556 P.2d 481 (1976) 21, 25, 27
People v. *Grana*, 185 Colo. 126, 527 P.2d 543 (1974) 27
People v. *Hamilton*, 74 Ill.2d 457, 24 Ill.Dec. 849, 386 N.E.2d 53 (1979) 22, 27
People v. *Harris*, 105 Cal.App.3d 204, 164 Cal.Rptr.296 (1980) 11, 12
People v. *Helm*, 89 Ill.2d 34, 59 Ill. Dec. 276, 431 N.E.2d 1033 (1981) 11, 24, 25, 27
People v. *Lafayette*, 99 Ill.App.3d 830, 55 Ill. Dec. 210, 425 N.E.2d 1383 (1981) 4

Page

People v. *Miller*, 7 Cal.3d 219, 101 Cal.Rptr. 860, 496 P.2d 1228 (1972) 23, 26
People v. *Miller*, 110 Mich.App.270, 312 N.W.2d 225 (1981) 27
People v. *Minjares*, 24 Cal.3d 410, 153 Cal.Rptr. 224, 591 P.2d 514, *cert. denied*, 444 U.S. 887 (1979) 12
People v. *Salter*, 91 Ill.App.3d 831, 47 Ill. Dec. 136, 414 N.E.2d 1252 (1980) 27
Pirner v. *State*, 45 Md.App. 50, 411 A.2d 135 (1980) 12
Preston v. *United States*, 376 U.S. 364 (1964) ..... *passim*
Reeves v. *State*, 599 P.2d 727 (Alaska 1979) 26
Shafi v. *State*, 377 So.2d 787 (Fla. App. 1979) 11
Shelton v. *Tucker*, 364 U.S. 479 (1960) 16
Smith v. *State*, 48 Md.App. 425, 427 A.2d 1064 (1981) 27
South Dakota v. *Opperman*, 428 U.S. 364 (1976) ..... *passim*
State v. *Bradshaw*, 41 Ohio App.2d 48, 322 N.E.2d 311 (1974) 27
State v. *Bramlett*, 94 N.M. 263, 609 P.2d 345 (Ct. App. 1980) 27
State v. *Crabtree*, 618 P.2d 484 (Utah 1980) 28
State v. *Daniel*, 589 P.2d 408 (Alaska 1979) 26
State v. *Downes*, 285 Or. 369, 591 P.2d 1352 (1979) 27
State v. *Dudley*, 561 S.W.2d 403 (Mo. App. 1977) 11
State v. *Filipi*, 297 N.W.2d 275 (Minn. 1980) 12
State v. *Frazier*, 318 N.W.2d 42 (Minn. 1982) 26
State v. *Gelvin*, 318 N.W.2d 302 (N.D.), *cert. denied*, ___ U.S. ___ (1982) 28
State v. *Goff*, 272 S.E.2d 457 (W.Va. 1980) 27
State v. *Gwinn*, 301 A.2d 291 (Del. Supr. 1973) 23, 24, 25, 27
State v. *Hall*, 52 N.C.App. 492, 279 S.E.2d 111 (1981) 27
State v. *Hassapelis*, 404 A.2d 232 (Me. 1979) 12
State v. *Houser*, 95 Wash.2d 143, 622 P.2d 1218 (1980) 27
State v. *Kaluna*, 55 Haw. 361, 520 P.2d 51 (1974) 27, 28
State v. *Keller*, 265 Or. 622, 510 P.2d 568 (1973) 27
State v. *McDougal*, 68 Wis.2d 399, 228 N.W.2d 671 (1975) 24, 27
State v. *Morgan*, 3 Kan.App.2d 667, 600 P.2d 155 (1979) 27
State v. *Newman*, 292 Or. 216, 637 P.2d 143 (1981) *cert. denied*, ___ U.S. ___ (1982) 10
State v. *Pace*, 171 N.J. Super. 240, 408 A.2d 808 (1979), pet. for certification denied, 84 N.J. 384, 420 A.2d 314 (1980) 27
State v. *Potter*, ___ Kan.App.2d ___, 648 P.2d 1162 (1982) 27
State v. *Prober*, 98 Wis.2d 345, 297 N.W.2d 1 (1980) 27
State v. *Rome*, 354 So.2d 504 (La. 1978) 23, 27
State v. *Romero*, 624 P.2d 699 (Utah 1981) 28
State v. *Roth*, 305 N.W.2d 501 (Iowa), *cert. denied*, ___ U.S. ___ (1981) 28
State v. *Southwell*, 369 So.2d 371 (Fla.App. 1979) 11
State v. *Stewart*, 611 S.W.2d 434 (Tex. Cr. App. 1981) 11
Stoner v. *California*, 376 U.S. 483 (1964) 7
Sumlin v. *State*, 266 Ark. 709, 587 S.W.2d 571 (1979) 13, 28

Page

Terry v. *Ohio*, 392 U.S. 1 (1968) 17
United States v. *Berry*, 571 F.2d 2 (7th Cir.), *cert. denied*, 439 U.S. 840 (1978) 11
United States v. *Bloomfield*, 594 F.2d 1200 (8th Cir. 1979) ..... *passim*
United States v. *Bosby*, 675 F.2d 1174 (11th Cir. 1982) 27
United States v. *Calandrella*, 605 F.2d 236 (6th Cir.), *cert. denied*, 444 U.S. 991 (1979) 11
United States v. *Chadwick*, 433 U.S. 1 (1977) ..... *passim*
United States v. *Cooper*, 428 F.Supp. 652 (S.D. Ohio 1977) 23, 25, 26
United States v. *Davis*, 501 F.Supp. 23 (N.D. Ga. 1980), *aff'd*, 647 F.2d 1119 (5th Cir. 1981) 24, 26
United States v. *Edwards*, 415 U.S. 800 (1974) ..... *passim*
United States v. *Goshorn*, 510 F.Supp. 108 (D. Mass. 1981) 26
United States v. *Hernandez-Rojas*, 470 F.Supp. 1212 (E.D.N.Y.), *aff'd*, 615 F.2d 1351 (2d Cir. 1979) 13
United States v. *Hill*, 458 F. Supp. 31 (D.D.C. 1978) ..... *passim*
United States v. *Jackson*, 529 F.Supp. 1047 (D. Md. 1981) 21, 29
United States v. *Johnson*, 588 F.2d 147 (5th Cir. 1979) 11, 12
United States v. *Lawsen*, 487 F.2d 468 (8th Cir. 1973) 7
United States v. *Marchand*, 564 F.2d 983 (2d Cir. 1977), *cert. denied*, 434 U.S. 1015 (1978) 10
United States v. *Markland*, 635 F.2d 174 (2d Cir. 1980), *cert. denied*, 451 U.S. 991 (1981) 25, 28
United States v. *Mills*, 472 F.2d 1231 (D.C. Cir. 1972) 23, 27
United States v. *Monclavo-Cruz*, 662 F.2d 1285 (9th Cir. 1981) .. *passim*
United States v. *Ocampo*, 492 F.Supp. 1211 (E.D.N.Y. 1980), *modified*, 650 F.2d 421 (2d Cir. 1981) 26
United States v. *Passaro*, 624 F.2d 938 (9th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981) 10, 13
United States v. *Rega*, 496 F.Supp. 101 (S.D.N.Y. 1980) 28
United States v. *Rigales*, 630 F.2d 364 (5th Cir. 1980) 12
United States v. *Robinson*, 414 U.S. 218 (1973) ..... *passim*
United States v. *Ross*, ___ U.S. ___, 72 L.Ed.2d 572 (1982) 14, 17, 22, 28
United States v. *Schleis*, 582 F.2d 1166 (8th Cir. 1978) 11, 26
United States v. *Vallieres*, 443 F.Supp, 186 (D. Conn. 1977) 26
Vance v. *United States*, 676 F.2d 183 (5th Cir. 1982) 7
Wolfe v. *North Carolina*, 364 U.S. 177 (1960) 5

Constitutional Provisions:

U. S. Const., Amend IV ..... *passim*

Miscellaneous:

La Fave, *Search* and *Seizure* (1978) 24

Note, *Warrantless Container Searches Under the Automobile and Search Incident Exceptions*, 9 Fordham Urban L.J. 185 (1980) 12

No. 81-1859

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

RALPH LAFAYETTE,
Respondent.

On Writ of Certiorari to the
Appellate Court of Illinois,
Third Judicial District

BRIEF OF THE CALIFORNIA STATE PUBLIC DEFENDER AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

INTEREST OF AMICUS CURIAE AND CONSENT

The State Public Defender of California is an agency of California state government which is charged with the representation on appeal of indigent criminal defendants. The outcome of the instant case will have a substantial impact upon the rights of persons represented by this office, as well as the public as a whole, to be free of routine warrantless searches of the contents of

repositories of personal effects during booking procedures. Accordingly, the State Public Defender of California is filing this brief amicus curiae in support of respondent.

This brief is filed pursuant to rule 36 of the Rules of the Supreme Court of the United States. Consent to filing of the brief has been given by counsel for petitioner and respondent, respectively. A written consent, signed by counsel for the parties, accompanies this brief.

SUMMARY OF ARGUMENT

At issue in this case is the propriety of the warrantless search of respondent's shoulder bag and its contents not at the time and place of arrest, but rather at city jail sometime after arrest. The officer who conducted the search testified that he did so in order to inventory the shoulder bag's contents. (J.A. 15.) Petitioner seeks to justify the search as a delayed search incident to arrest and as an inventory search. Amicus will argue that neither theory advanced by petitioner applies.

Amicus will demonstrate that since a man's shoulder bag, like luggage, is not immediately associated with the person of the arrestee, the search cannot be justified as a search incident to arrest since it was remote in time and place from the arrest. *United States* v. *Chadwick,* 433 U.S. 1, 15 (1977); *see also Preston* v. *United States,* 376 U.S. 364 (1964).

With respect to the inventory search rationale, amicus will argue that the "reasonableness" requirement of the Fourth Amendment mandates that repositories of personal effects be inventoried as a unit except where the

police can point to specific and articulable facts which justify a search of the repository's contents. Amicus will show that the three recognized purposes of such searches, *i.e.,* protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and protection of the police from potential danger, *South Dakota* v. *Opperman,* 428 U.S. 364, 369 (1976), are better advanced by inventorying repositories of personal effects as a unit than by a detailed inventorying of their contents. It will also be shown that inventorying as a unit protects the owner's expectations of privacy in the repository, frees the police from the onerous, unnecessary and time-wasting ministerial task of inventorying every object found in every container possessed by every arrestee, and sets forth a "straightforward rule." *See New York* v. *Belton,* 453 U.S. 454, 459 (1981). This rule informs police of what they are permitted to do and prohibited from doing and assures predictable resolution of cases contesting the propriety of inventory searches. Amicus has found that the overwhelming majority of the courts which have spoken to the issue have disapproved of inventory searches of the contents of repositories of personal effects and other containers whose contents are not in plain view, and instead have stated that the appropriate procedure is to inventory such repositories as a unit.

STATEMENT

The briefs filed by the parties and other amici adequately advise the court of the procedural history and

facts of this case. Amicus therefore will not discuss them in detail. Instead, amicus wishes to emphasize the few facts on which the constitutional issues turn. Those facts are that respondent was arrested at a theater. (J.A. 7, 11.) At the time of arrest he had in his possession a shoulder bag. (J.A. 7.) Police did not search the shoulder bag at the time and place of arrest. Instead, they searched it at the city jail after they brought respondent there. (J.A. 7, 8, 11.) The search was conducted in order to inventory the contents of the shoulder bag pursuant to standard procedures. (J.A. 15–16.) The officer testified, however, that inventory or evidence bags were available at the jail, and the shoulder bag could have been placed in an inventory bag which could then have been sealed and locked in a locker. (J.A. 15.)

ARGUMENT

I

THE SEARCH INCIDENT TO ARREST EXCEPTION TO THE WARRANT REQUIREMENT DOES NOT APPLY TO THE SEARCH OF RESPONDENT'S SHOULDER BAG SINCE THE SHOULDER BAG WAS NOT IMMEDIATELY ASSOCIATED WITH RESPONDENT'S PERSON, AND SINCE A SEARCH INCIDENT TO ARREST OF SUCH OBJECTS MAY NOT LAWFULLY BE REMOTE FROM THE TIME AND PLACE OF ARREST [1]

[1] Amicus addresses on its merits the "delayed search incident" rationale advanced by petitioner. Amicus notes, however, that the state court ruled that petitioner waived this theory. The court based its ruling on Illinois precedent. *People* v. *Lafayette*, 99 Ill.App.3d 830, 55 Ill. Dec. 210, 425 N.E.2d 1383, 1385 (1981) and case cited.

A. The Search of the Shoulder Bag Was Impermissible Under *United States* v. *Chadwick*.

"[I]t is a cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' " *Mincey* v. *Arizona*, 437 U.S. 385, 390 (1978), citing *Katz* v. *United States*, 389 U.S. 347, 357 (1967). Searches incident to arrest comprise one of the recognized exceptions to the warrant requirement. *See generally, Chimel* v. *California*, 395 U.S. 752 (1969) and *United States* v. *Robinson*, 414 U.S. 218 (1973).

The purposes which underlie searches incident to arrest are to protect officers from concealed weapons and to prevent the concealment or destruction of evidence

---

State procedural rules apply to cases in which federal rights are litigated in state court. *John* v. *Paullin*, 231 U.S. 583, 585 (1913); *Wolfe* v. *North Carolina*, 364 U.S. 177, 195 (1960). In *Michigan* v. *Tyler*, 436 U.S. 499, 512, fn. 7 (1978), this Court stated: "Failure to present a federal question in conformance with state procedure constitutes an adequate and independent ground of decision barring review in this Court, so long as the State has a legitimate interest in enforcing its procedural rule. Citations. The petitioner does not claim that Michigan's procedural rule serves no legitimate purpose. Accordingly, we do not entertain petitioner's . . . claim which the state court refused to consider because of procedural default." Here the Illinois court did not actually reach the issue of whether the search incident to arrest rationale pertained.

Moreover, the fact the state court below passed hypothetically on the federal issue, *see* 425 N.E.2d at 1385, is of no significance. In *Herb* v. *Pitcairn*, 324 U.S. 117, 124–26 (1945), this Court recognized that where the state court rules that a federal issue is barred by a state procedural rule, but proceeds to discuss the federal question, any decision by this Court amounts to nothing but an advisory opinion.

of crime. *Chimel* v. *California, supra,* 395 U.S. at 762–763. The scope of the search incident to arrest must be strictly tied to and justified by the circumstances which render its initiation permissible. *New York* v. *Belton,* 453 U.S. 454, 457 (1981). Thus officers may search the area into which the arrestee might reach in order to grab a weapon or an item of evidence. *Chimel* v. *California, supra,* 395 U.S. at 763. This search may extend to a drawer within reach of the arrestee. *Ibid.* It may also extend to the passenger compartment of the car the arrestee was in just before he was arrested, and to containers therein located. *New York* v. *Belton, supra,* 453 U.S. at 462, 460.

The well-recognized rule that the scope of a search incident to arrest must be strictly tied to and justified by the circumstances permitting its initiation, *id.* at 457, gives rise to limits on the time and place of the search of effects. The leading case on this point is this Court's unanimous opinion in *Preston* v. *United States,* 376 U.S. 364 (1964). In that case Preston and two companions were removed from a car, arrested for vagrancy, and taken to police headquarters. The car, which had not been searched at the time of arrest, was towed to a garage and searched. The search revealed evidence which led to conviction for conspiracy to commit bank robbery. It was argued that the search was justified as incidental to a lawful arrest. This Court rejected that contention, stating:

> "Once an accused is under arrest and in custody, then a search made at another place, without a war-

> rant, is simply not incident to the arrest. . . . We think that the search was too remote in time or place to have been made as incidental to the arrest and conclude, therefore, that the search of the car without a warrant failed to meet the test of reasonableness under the Fourth Amendment, rendering the evidence obtained as a result of the search inadmissible."

Id. at 367, 368. *Preston* remains good law insofar as it places limitations on the time and location of a search of property incident to arrest. *See, e.g., Cady* v. *Dombrowski,* 413 U.S. 433, 444 (1973); *Stoner* v. *California,* 376 U.S. 483, 486–87 (1964); *Dyke* v. *Taylor Implement Co.,* 391 U.S. 216, 220 (1968); *Vance* v. *United States,* 676 F.2d 183, 190 (5th Cir. 1982); *United States* v. *Lawsen,* 487 F.2d 468, 470 (8th Cir. 1973).

Entirely different limits with respect to time and location apply to searches of the *person* of the arrestee incident to arrest, *United States* v. *Edwards,* 415 U.S. 800 (1974).

In *Edwards,* the defendant was arrested for breaking into a post office and was placed in the local jail. Ten hours after his arrest the clothing which he had been wearing since his arrest was taken from him and searched for evidence of the crime in the form of paint chips from the post office. This Court upheld the search as being a lawful search incident to arrest, stating, in dictum, that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention." 415 U.S. at 803. This dictum, if carried to its

logical conclusion, would permit the delayed search of personal effects at a place other than that of arrest.

Edwards, however, did not set forth an absolute rule. Rather, this Court stated that "[i]n upholding this search we do not conclude that the Warrant Clause of the Fourth Amendment is never applicable to post-arrest seizures of the effects of an arrestee." 415 U.S. at 808 (footnote omitted).

In *United States* v. *Chadwick,* 433 U.S. 1 (1977) this Court explained the limitations of *Edwards* and reconciled *Edwards* with *Preston.*

Chadwick involved three defendants arrested on suspicion of transporting a controlled substance. A footlocker believed to contain the contraband was seized at the time of arrest. The footlocker was removed to Boston Federal Building and searched an hour and a half after the arrest. Among the grounds advanced by the government to uphold the search was the search incident to arrest doctrine. This Court quoted *Preston* with approval, stating that "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest. . . .' " 433 U.S. at 15. This Court went on to distinguish *Edwards* and *United States* v. *Robinson, supra,* 414 U.S. 218 [2] stating:

[2] *Robinson* involved the search, at the time of arrest, of a cigarette package taken from the breast pocket of the coat the arrestee was wearing. 414 U.S. at 220–23. This Court's holding reveals that it viewed the case as involving a search of the person: "[W]e hold that in the case of a lawful custodial arrest a full search of the *person* is not only an exception to the warrant requirement of the Fourth Amendment but is also a 'reasonable' search under that Amendment." 414 U.S. at 235 (italics added).

> "Unlike searches of the person, *United States* v. *Robinson,* 414 U.S. 218 (1973); *United States* v. *Edwards,* 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondents' privacy interest in the contents of the footlocker was not eliminated simply because they were under arrest."

433 U.S. at 16, fn. 10. This Court further indicated, in dictum, that a search incident to arrest does not extend to "personal property not immediately associated with the person of the arrestee. . . ." *Id.* at 15; *see also Chambers* v. *State,* 422 N.E.2d 1198, 1202–03 (Ind. 1981).

The foregoing portions of *Chadwick* have been the point of departure for subsequent inquiries into searches of personal effects both at the time of arrest and after arrest. Two distinct rules have emerged, although, as will be seen, without a clear division in their applicability. One holds that a search of effects immediately associated with the person may be justified by the fact of arrest alone. The other holds that a search of luggage or similar property not immediately associated with the person of the arrestee remains governed by *Preston's* requirement that the search not be remote in time or place from the arrest.[3]

This Court was cognizant of the above distinction in *New York* v. *Belton, supra,* 453 U.S. 454. In *Belton,* this Court held that "when a policeman has made a lawful

[3] Even a short delay will cause the Court to conclude that the search was not incident to the arrest. *See Dyke* v. *Taylor Implement Co., supra,* 391 U.S. 216.

custodial arrest of the occupant of an automobile, he may, as a *contemporaneous* incident of that arrest, search the passenger compartment of that automobile." 453 U.S. at 460 (italics added; footnotes omitted). This Court went on to point out that the search in *Chadwick* did not involve a valid search incident to arrest because the search followed the arrest by more than an hour. *Id.* at 462. This Court then noted of the search in *Belton* that it "followed immediately upon [the] arrest." *Ibid.*[4]

Other courts too have been cognizant of the distinction between search of the person and searches of property. The most thorough recent discussion of the point appears in *United States* v. *Monclavo-Cruz,* 662 F. 2d 1285 (9th Cir. 1981), a post-*Belton* case. There the defendant was arrested in a car, and a purse she was carrying was seized from her person. The arresting officer, acting without a warrant, searched the purse in his office an hour after the arrest. The government sought to justify the search as a delayed search of the person incident to arrest within the purview of *Edwards.* The court re-

[4] *Belton* involved the search of the pocket of a jacket. The jacket was not worn by a suspect as in *Robinson* but was, instead, on the seat of the car from which the suspects had been removed. Objects which are deemed part of the person if they are worn lose that character when they are not. Compare *United States* v. *Passaro,* 624 F.2d 938, 943–44 (9th Cir. 1980), *cert. denied,* 449 U.S. 1113 (1981) (wallet taken from pocket of suspect is "an element of his clothing, his person" within the meaning of *Robinson*) with *United States* v. *Marchand,* 564 F.2d 983, 991 (2d Cir. 1977), *cert. denied,* 434 U.S. 1015 (1978) (dictum) (*Chadwick* would not permit search of a wallet left on a table); *see also State* v. *Newman,* 292 Or. 216, 637 P.2d 143, 146–47, fn. 8 (1981), *cert. denied,* ____ U.S. ____ (1982) (dictum) (search of purse lying on ground is a search of property, not the person).

jected this justification. The court recognized that *Edwards* allows the warrantless search of the person. The court ruled, however, that *Chadwick* distinguished *Edwards* and held *Edwards* to be inapplicable to searches of possessions. The court held that the defendant's purse was a possession, not an element of clothing. 662 F.2d at 1289–90. Since the search was remote in time and place from arrest, the court ruled that the search could not be upheld as a search incident to arrest. *Id.* at 1287–88, 1290–91. Other cases also hold that *Chadwick* limits *Edwards* and that *Edwards* does not authorize the search of possessions at a time and place remote from the arrest.[5]

While there is disagreement in the cases concerning whether a purse is immediately associated with the person and hence to be treated as clothing, or is instead not immediately associated with the person and hence

[5] *E.g., United States* v. *Calandrella,* 605 F.2d 236, 248–49 (6th Cir.) *cert. denied,* 444 U.S. 991 (1979); *United States* v. *Schleis,* 582 F.2d 1166, 1168, 1170–72 (8th Cir. 1978) (en banc); *State* v. *Dudley,* 561 S.W.2d 403, 406 (Mo. App. 1977); *see also United States* v. *Johnson,* 588 F.2d 147, 151 (5th Cir. 1979) (dictum); *United States* v. *Berry,* 571 F.2d 2, 3 (7th Cir.), *cert. denied,* 439 U.S. 840 (1978) (dictum); *People* v. *Harris,* 105 Cal.App.3d 204, 215–16, 164 Cal. Rptr. 296 (1980) (dictum); *Matter of B.K.C.,* 413 A.2d 894 (D.C. 1980) (search of briefcase at place other than place of arrest ruled improper); *Shafi* v. *State,* 377 So.2d 787 (Fla.App. 1979) (search of luggage at Border Patrol Office improper); *State* v. *Southwell,* 369 So.2d 371 (Fla.App. 1979) (search of overnight bag at jail held improper); *People* v. *Helm,* 89 Ill.2d 34, 59 Ill. Dec. 276, 431 N.E.2d 1033 (1981) (search of purse at police station ruled improper); *Bradford* v. *State,* 401 N.E.2d 77 (Ind. App. 1980) (same); *Chambers* v. *State, supra,* 422 N.E.2d at 1202–03; *Johnson* v. *State,* 413 N.E.2d 335, 336 (Ind. App. 1980) (search of purse 10 to 15 minutes after arrest ruled improper); *State* v. *Stewart,* 611 S.W.2d 434 (Tex. Cr. App. 1981).

treated as a possession,[6] the case at bench concerns a man's shoulder bag, which is like luggage. Note, *Warrantless Container Searches Under the Automobile and Search Incident Exceptions,* 9 Fordham Urban L.J. 185, 213 (1980). Indeed, the warrantless searches of similar objects have been held improper under *Chadwick. E.g. United States* v. *Rigales,* 630 F.2d 364, 366, 367–68 (5th Cir. 1980) (leather case); *United States* v. *Johnson, supra,* 588 F. 2d at 150–53 (duffle bag); *People* v. *Minjares,* 24 Cal.3d 410, 415, 419–20, 153 Cal. Rptr. 224, 591 P.2d 514, *cert. denied,* 444 U.S. 887 (1979) (tote bag); *Liles* v. *State,* 375 So.2d 1094 (Fla. App. 1979) (leather or vinyl satchel); *State* v. *Hassapelis,* 404 A.2d 232, 237 (Me. 1979) (gym bag); *Pirner* v. *State,* 45 Md. App. 50, 411 A.2d 135, 142 (1980) (duffle bag); *State* v. *Filipi,* 297 N.W.2d 275 (Minn. 1980) (same).

Since the shoulder bag in the case at bench was an article of luggage, it was improper, under *Chadwick,* to search it at a place and time remote from the arrest. See *New York* v. *Belton, supra,* 453 U.S. at 460 (search was a "contemporaneous incident" of arrest); *United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289–90.[7] *United*

[6] Compare, *e.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1290 (purse not to be treated like clothing) and *People* v. *Harris, supra,* 105 Cal.App. 3d at 215–16 (purse, under California law, deemed to be part of the person); see generally *Hinkel* v. *Anchorage,* 618 P.2d 1069, 1072, fn. 3 (Alaska 1980).

[7] The case of *Abel* v. *United States,* 362 U.S. 217 (1960), cited by petitioner and the United States, seems to support a noncontemporaneous search of luggage, but actually does not apply. There I.N.S. agents arrested petitioner in a hotel room and conducted a thorough search of all petitioner's belongings in the room and the adjoining bathroom. Petitioner then packed his possessions and they were taken to I.N.S. headquarters where they were searched more thoroughly. *Id.* at 223–224. This Court upheld the latter search stating: "We do not think it significantly different,

States v. *Chadwick, supra,* 433 U.S. at 15–16, controls and requires that the judgment be affirmed.

B. The Court's Ruling Should Preclude Delayed Searches of All Repositories of Personal Effects, Including Wallets and Purses.

While the search of the shoulder bag in the instant case cannot be justified as a search incident to arrest, the court may wish to promulgate a rule which will remove the inconsistency which currently exists in the law with respect to whether the search incident to arrest theory allows for the delayed searches of purses [8] and wallets.[9] Amicus submits that the Court should hold that searches of repositories of personal effects are invalid if remote in time and place from the arrest.[10]

---

when the accused decides to take the property with him, for the search of it to occur instead at the first place of detention when the accused arrives there, especially as the search of property carried by an accused to the place of detention has an additional justification, similar to those which justify a search of the person of one who is arrested." *Id.* at 239. This Court quoted this language from *Abel* in *United States* v. *Edwards, supra,* 415 U.S. at 803.

Abel does not apply. *United States* v. *Chadwick, supra,* 433 U.S. at 15–16, expressly holds the search of luggage may not be justified as a search incident to arrest when the search is remote in time and place from the arrest. *Chadwick* is incompatible with *Abel* and undermines *Abel's* precedential value. See *United States* v. *Hernandez-Rojas,* 470 F.Supp 1212, 1221 (E.D.N.Y.) *aff'd,* 615 F.2d 1351 (2d Cir. 1979)

[8] Compare, *e.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289–90 (search held improper) and *Sumlin* v. *State,* 266 Ark. 709, 587 S.W.2d 571, 577 (1979) (search held proper).

[9] Compare, *e.g., United States* v. *Passaro, supra,* 624 F.2d at 943–44 (search held proper) and *People* v. *Bean,* 107 Ill. App. 3d 662, 63 Ill. Dec. 373, 437 N.E.2d 1295, 1296–99 (1982) (search held improper).

[10] This case does not present the spatial scope of a search incident to arrest with respect to the possessions of a person not in an automobile. The Court thus need not determine whether the search incident to arrest rationale allows the immediate search of a container carried by such an arrestee or resting near him. The spatial limit here under discussion is the location of the possession at the time of the search, not at the time of its seizure.

Recent cases from this Court point to the adoption of such a rule. This Court has stated that it is improper to make distinctions in Fourth Amendment protection based on the nature of the repository of personal effects. *United States* v. *Ross*, ___ U.S. ___, ___, 72 L.Ed.2d 572, 592 (1982). If the Court is inclined to abolish such distinctions in the context of delayed searches incident to arrest, amicus submits that it should be done so as to prohibit the delayed searches of containers carried in clothing (such as wallets) and containers which serve similar functions (such as women's purses).

Adoption of this rule will not require the Court to depart from its holdings in *United States* v. *Robinson, supra,* 414 U.S. 218 and *United States* v. *Edwards, supra,* 415 U.S. 800. *Robinson* involved a contemporaneous search, not a delayed one. 414 U.S. at 220–23. Searches of containers incident to arrest remain permissible so long as they are contemporaneous to the arrest. *New York* v. *Belton, supra,* 453 U.S. at 462. Since the rule amicus advances applies only to delayed searches, it would have no impact on *Robinson.*

Edwards, on the other hand, involved the seizure of clothing (not a container), and the seizure of evidence of crime which was undoubtedly in plain view on the clothing.[11] It may be limited to these facts, just as *Robinson* is limited to searches contemporaneous to arrest.

[11] Objects within the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence. *Harris* v. *United States,* 390 U.S. 234, 236 (1968).

The rule amicus advances would have no impact on plain view "searches."

But if the Court feels that the abolition of distinctions between containers necessitates a selection between precedents, amicus submits that the rule of *Chadwick* should prevail. As this Court recently noted, when choosing between two lines of authority, its choice "must be based upon principle." *Oregon* v. *Kennedy*, ___ *U.S.* ___, ___ *fn. 8, 72 L.Ed.2d 416, 426, fn. 8 (1982)*. *Chadwick* is based on the fundamental Fourth Amendment principle of protecting expectations of privacy in possessions. 433 U.S. at 16, fn. 10 and at 11.

In contrast *Robinson,* and cases following it, are not based on the fundamental Fourth Amendment principle of protecting expectations of privacy, but instead merely assume and assert that an arrest terminates any expectation of privacy an arrestee may have in his person. *United States* v. *Chadwick, supra,* 433 U.S. at 16, fn. 10. In determining whether that loss of expectation of privacy extends to respondent's shoulder bag, more is needed than the tautological assertion that respondent had no expectation of privacy in it. Amicus believes that *Robinson* speaks directly only to the necessary justification for the initiation of the search of an arrestee, and not to the time and place of such a search.

The central question addressed in *Robinson* was whether any cause to believe an arrestee to be armed or in possession of evidence of a crime was necessary to permit a search of an arrestee's person. This Court held that it was not, stating:

> "A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."

414 U.S. at 235. Were this reasoning to be applied to the time and place of the search incident to arrest, an arrestee's house and effects, wherever located and whenever searched, would be without protection against warrantless searches. *Robinson* simply sets forth no principled reason to remove limits upon the time and place of a search incident to arrest.

Indeed, were it the case that "no additional justification" is necessary for a search broader than some permissible minimum (*i.e.*, a search of the person at the time of arrest), the pronouncement in *Robinson* would run afoul of a fundamental premise of our Constitution.

> "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

Shelton v. *Tucker*, 364 U.S. 479, 488 (1960) (footnote omitted).[12] That premise finds application in the realm of the Fourth Amendment in the longstanding rule that the scope of a warrantless search must be strictly tied to and justified by the circumstances permitting its initia-

[12] This precise quotation is the basis for the holding that a repository of personal effects should be secured as a unit, rather than inventoried, in *United States* v. *Hill*, 458 F.Supp. 31, 36–37 (D.D.C. 1978).

tion. *Terry* v. *Ohio,* 392 U.S. 1, 19 (1968); *see also Preston* v. *United States, supra,* 376 U.S. at 367–68; *Agnello* v. *United States,* 269 U.S. 20, 30–31 (1925). There is nothing in the mere fact of arrest which in principle authorizes a search remote in time or place from the arrest.

In amicus' view, the search of a repository of personal effects which has been seized from the person of an arrestee is a greater intrusion than a mere search of the person, and thus requires justification beyond the fact of arrest. The permissibility of the search of the cigarette package approved in *Robinson* is subject to reexamination in light of this Court's recognition in *United States* v. *Chadwick, supra,* 433 U.S. at 13, that the search of a container is a greater intrusion than its initial seizure, in light of the acknowledgement in *Arkansas* v. *Sanders,* 442 U.S. 753, 763 (1979) that the reasonableness of a search of an effect cannot depend solely upon the place from which it is seized, and in light of the ruling in *United States* v. *Ross, supra,* ____ U.S. at ____, 72 L.Ed.2d at 592, that the central purpose of the Fourth Amendment forecloses distinctions between types of containers.

Amicus therefore concludes that Fourth Amendment principles require the Court to adopt the rule that an effect may not be searched at a time and place remote from the arrest without prior judicial approval. Under such a rule, the noncontemporaneous search of respondent's shoulder bag and the noncontemporaneous search of any repository of personal effects, including wallets and purses, would be illegal.

Amicus notes again that he makes the foregoing argument in order to aid the Court in establishing a principled rule which applies to all repositories of personal effects and which will eliminate the current disparity in the case law with respect to searches of wallets and purses. The Court need not, however, establish a broad rule in order to decide the instant case. Respondent's shoulder bag is like luggage and was not immediately associated with his person. The search of the shoulder bag cannot be justified as incident to respondent's arrest because it was remote in time and place from the arrest. *United States* v. *Chadwick,* 433 U.S. at 15–16. Accordingly the court below was correct when, in dictum, it rejected the delayed search incident to arrest theory advanced by petitioner.

II

SINCE IT FURTHERS BOTH THE PURPOSES OF INVENTORY SEARCHES AND THE PRIVACY INTERESTS PROTECTED BY THE FOURTH AMENDMENT TO INVENTORY REPOSITORIES OF PERSONAL EFFECTS AS A UNIT, THEIR CONTENTS MAY BE EXAMINED ONLY WHERE THE CIRCUMSTANCES INDICATE THAT INVENTORYING AS A UNIT WOULD NOT ADEQUATELY SERVE THE PURPOSES OF INVENTORY SEARCHES

In *South Dakota* v. *Opperman,* 428 U.S. 364 (1976), this Court approved the routine inventory searches of certain contents of automobiles without probable cause or a warrant, holding such a practice to be reasonable under the Fourth Amendment. The Court held that the

reasonableness of such a search depends upon a balancing of individual and state interests under the facts of a given case. Relevant are the status, vis-a-vis the Fourth Amendment, of the object to be inventoried, and the purposes of inventorying the effect. *Id.* at 367–69.

In *Opperman,* this Court noted that automobiles enjoy a lesser expectation of privacy [13] than do homes, offices, or repositories of personal effects.[14] *Ibid.* This Court observed that the inventorying of automobiles serves three purposes: the protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger. *Id.* at 369. This Court further observed that in other contexts it had found police intrusions into automobiles reasonable, that the particular inventory search under review [15] was reasonable on its facts, and that inventory searches of automobiles were reasonable in general. *Id.* at 375–376.

Opperman was a 5–4 decision. In a concurring opinion Justice Powell emphasized that the purposes for inventory searches must be weighed against the citizen's in-

[13] "[A] fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests. . . ." *United States* v. *Chadwick, supra,* 433 U.S. at 11.

[14] "[T]he configuration, use and regulation of automobiles may dilute the reasonable expectation of privacy that exists with respect to differently situated property." *Arkansas* v. *Sanders,* 442 U.S. 753, 761 (1979).

[15] The police in *Opperman* inventoried the contents of the car and glove compartment. *Id.* at 366. *Opperman* did not involve an inventory of the contents of a repository of personal effects.

terest in the privacy of the contents of the automobile. *Id.* at 378–379. While he agreed that the search under review was constitutional, *id.* at 384, Justice Powell cautioned that "[u]pholding searches of this type provides no general license for the police to examine all contents of [impounded] automobiles." *Id.* at 380 (footnote omitted).[16]

In a dissenting opinion, Justice Marshall [17] stated that the reasons advanced for inventorying the contents of an automobile did not warrant the intrusion into Opperman's privacy which occurred.[18] He noted, moreover, that "the Court's opinion does not authorize the inspection of suitcases, boxes, or other containers which might themselves be sealed, removed, and secured without further intrusion." *Id.* at 388, fn. 6.

What emerges from an analysis of the concurring and dissenting opinions in *Opperman* is the view, apparently shared by a majority of the Court, that there are limits on the scope of automobile inventory searches, particularly when the search intrudes into the individual's privacy.

---

[16] Justice Powell expressed the view that "the unrestrained search of an automobile and its contents would constitute a serious intrusion upon the privacy of the individual in many circumstances. But such a search is not at issue in this case." *Id.* at 379–80. He also suggested that the investigation into private concerns, such as the reading of letters or check books, would not be permissible. *Id.* at 380, fn. 7.

[17] Justices Brennan and Stewart joined in Justice Marshall's dissent. *Id.* at 384. Justice White agreed with most of Justice Marshall's dissent. *Id.* at 396.

[18] Justice Marshall also found that two of the three reasons for inventories, i.e., protection of police against claims or disputes over lost or stolen property, and protection of the police from potential danger, were not present on the record before him. *Id.* at 389–91.

In the instant case this Court will determine the circumstances under which police may inventory the contents of a repository of personal effects. Amicus respectfully submits and will demonstrate that it furthers both the purposes of inventory searches and the privacy interest protected by the Fourth Amendment to inventory repositories of personal effects as a unit. Amicus will show that the overwhelming majority of courts which have considered the issue have approved either inventorying as a unit or some other disposition short of inventorying the contents of such repositories. Amicus does not, however, take the position that an inventory of contents is never permissible; rather, the contents of such repositories may be examined, but only where the circumstances indicate that inventorying as a unit would not adequately serve the purposes for which inventory searches are conducted.

The purposes furthered by the inventorying of a repository of personal effects are the same as the purposes furthered by the inventorying of the contents of a car, *i.e.*, the protection of the owner's property while he remains in police custody, the protection of the police against claims or disputes over lost or stolen property, and the protection of the police from potential danger. *E.g.*, *United States* v. *Bloomfield*, 594 F.2d 1200, 1202 (8th Cir. 1979); *United States* v. *Jackson*, 529 F.Supp. 1047, 1052 (D. Md. 1981); *United States* v. *Hill*, 458 F.Supp. 31, 33, (D. D.C. 1978); *People* v. *Counterman*, 192 Colo. 152, 556 P.2d 481, 484 (1976); *People* v.

Hamilton, 74 Ill.2d 457, 24 Ill. Dec. 849, 386 N.E.2d 53, 57 (1979). But while the purposes for inventorying are the same, a person's expectations of privacy in a repository of personal effects are substantially greater than in an automobile. *United States* v. *Chadwick, supra,* 433 U.S. at 13; *United States* v. *Ross, supra,* ___ U.S. at ___, 72 L.Ed.2d at 585. This Court must determine whether the purposes of the inventory search outweigh the expectation of privacy which the inventorying of the contents of repositories of personal effects infringes.

It first must be noted that although the purposes of inventorying are the same here and in *Opperman,* this Court, in *United States* v. *Chadwick, supra,* 433 U.S. at 13, fn. 7, recognized that automobiles pose special problems of storage, and that the size and inherent mobility of automobiles make them susceptible to theft or intrusion by vandals. This Court has recognized, however, that personal effects pose no security problems comparable to those posed by automobiles. *Arkansas* v. *Sanders, supra,* 442 U.S. at 765–66, fn. 14; *see also, United States* v. *Chadwick, supra,* 433 U.S. at 13.

Turning more specifically to the three purposes for inventories, it appears that none points to the need to routinely inventory the contents of respositories of personal effects, rather than inventorying them as a unit. Indeed, as will be shown, all three purposes are better served by not conducting routine inventories of the contents of such repositories.

Turning first to the purpose of protecting the owner's property, it is self-evident that property is protected not

because it is inventoried but because of the nature of the location in which it is stored and the precautions taken to keep that location secured.[19] Indeed, several courts have recognized that repositories of personal effects can be fully protected by keeping them in a secure location. *E.g., United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1289; *United States* v. *Bloomfield, supra,* 594 F.2d at 1202; *United States* v. *Hill, supra,* 458 F.Supp. at 36; *United States* v. *Cooper,* 428 F.Supp. 652, 654 (S.D. Ohio 1977); *People* v. *Bayles,* 82 Ill.2d 128, 44 Ill. Dec. 880, 411 N.E.2d 1346, 1353 (1980), *cert. denied,* 453 U.S. 923 (1981); *see also State* v. *Gwinn,* 301 A.2d 291, 294 (Del. Supr. 1973) (satchel can be secured with a chain lock); *People* v. *Miller,* 7 Cal.3d 219, 224, 101 Cal. Rptr. 860, 496 P.2d 1228 (1972) (coat seized from car need not be searched to be secured).

As to the second purpose, the police secure no greater protection against claims or disputes over lost or stolen property simply because they inventory the repository's

[19] Since automobiles are stored in lots, it might require a guard to keep them secure. *South Dakota* v. *Opperman, supra,* 428 U.S. at 379 (Powell, J., concurring). Repositories of personal effects, on the other hand, are normally stored in a secured area of a jail facility, not in places to which the public might easily gain access. *See United States* v. *Chadwick, supra,* 433 U.S. at 13 (footlocker removed to Boston Federal Building, a secure location).

Moreover, unlike the situation in *Opperman* in which the owner was not present to make other arrangements for the safekeeping of his belongings, 428 U.S. at 375, the owner of a repository of personal effects will be present at the time of booking. He can be given the opportunity to avoid the necessity to "book" his property by posting bond in the case of a petty offense, *United States* v. *Mills,* 472 F.2d 1231, 1240–41 (D.C. Cir. 1972) (en banc), or by arranging for an alternative disposition of his property. *See, e.g., State* v. *Rome,* 354 So.2d 504 (La. 1978).

contents. Justice Powell recognized this in his concurring opinion in *Opperman* when he stated:

> "It is not clear, however, that inventories are a completely effective means of discouraging false claims, since there remains the possibility of accompanying such claims with an assertion that an item was stolen prior to the inventory or was intentionally omitted from the police records."

428 U.S. at 378–379.

Justice Marshall, in his dissent, concurred with Justice Powell's observation and added: "[I]t may well be doubted that an inventory procedure would in any event work significantly to minimize the frustrations of false claims." *Id.* at 391. The police are adequately protected by securing the repository as a unit. *United States* v. *Bloomfield, supra,* 594 F.2d at 1202; *United States* v. *Davis,* 501 F.Supp. 23, 26 (N.D. Ga. 1980), *aff'd,* 647 F.2d 1119 (5th Cir. 1981); *United States* v. *Hill, supra,* 458 F.Supp. at 36. Indeed, false claims are more likely when the contents of an object are handled and inventoried as compared to when the container is immediately sealed. *People* v. *Helm,* 89 Ill.2d 34, 59 Ill.Dec. 276, 431 N.E.2d 1033, 1035 (1981); 2 La Fave, *Search and Seizure,* §5.5 at 360, fn. 50 (1978).

Moreover, the risk of claims against the police is insignificant. Thus in *State* v. *McDougal,* 68 Wis.2d 399, 228 N.W.2d 671, 678 (1975), the court noted that while it did not doubt that false claims against the police had been made, none had ever reached that court. And in *State* v. *Gwinn, supra,* 301 A.2d at 294, the Delaware Supreme Court noted that the state was able to cite no example, there or elsewhere, of a case where an officer was held liable for loss of property. The court further stated that "the police officer, we think, is less likely to be falsely

accused of theft or loss of contents of the satchel if his hands never touch the contents." *Ibid.*

The third purpose of protecting police from potential danger is not served by blindly and routinely searching a repository of personal effects. As was pointed out in *United States* v. *Cooper, supra,* 428 F.Supp. at 655; "No sane individual inspects for booby-traps by simply opening the container." Moreover, if the repository contained an immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the stationhouse in the first place. *See United States* v. *Chadwick, supra,* 433 U.S. at 15, fn. 9. In short, a repository which contains a dangerous object requires special attention by the police. The requisite attention is never given in the context of a routine inventory search. The police protection purpose is thus rarely, not routinely, present. Its invocation should be limited to those situations in which the actions and testimony of the police show a reasonable belief on their part that the repository contained something dangerous. *See United States* v. *Bloomfield, supra,* 594 F.2d at 1203; *People* v. *Helm, supra,* 431 N.E.2d at 1034; *People* v. *Bayles, supra,* 411 N.E.2d at 1352–53; *see also People* v. *Counterman, supra,* 556 P.2d at 485 ("The knapsack did not give any indication that its contents were dangerous. . . ."); *State* v. *Gwinn, supra,* 301 A.2d at 295 (characterizing the risk as "conjectural" and "remote"); *cf. United States* v. *Markland,* 635 F.2d 174 (2d Cir. 1980) *cert. denied,* 451 U.S. 991 (1981) ("surprisingly heavy" plastic thermal beverage bag could have contained something dangerous).[20]

[20] The United States, at page 27 of its amicus brief, states that another rationale for an inventory is to search for identification. We respectfully submit that this contention is specious. Assuming, *arguendo,* that this is an appropriate purpose of an inventory, identification is rarely, if ever, kept in a luggage-like respository such as respondent's shoulder bag. It therefore would not be

As is clear from the foregoing analysis, not only are the expectations of privacy in repositories of personal effects great, but all of the purposes of inventory searches can be better served in virtually every case by something other than the routine searching of the contents of such repositories. This simple truism has been recognized by the overwhelming majority of courts which have addressed the matter of how to inventory a repository of personal effects or other container whose contents are not in plain view. The opinions of these courts make clear that the appropriate way to inventory such repositories and containers is to inventory them as a unit or otherwise store them without opening them. *United States* v. *Monclavo-Cruz, supra,* 662 F.2d at 1288–1289; *United States* v. *Bloomfield, supra,* 594 F.2d at 1202–1203; *United States* v. *Schleis,* 582 F.2d 1166, 1173 (8th Cir. 1978) (en banc); *United States* v. *Goshorn,* 510 F.Supp. 108, 112 (D. Mass. 1981); *United States* v. *Davis, supra,* 501 F.Supp. at 26; *United States* v. *Ocampo,* 492 F.Supp. 1211, 1234 (E.D.N.Y. 1980), *modified,* 650 F.2d 421 (2d Cir. 1981); *United States* v. *Hill, supra,* 458 F.Supp. at 33–37; *United States* v. *Vallieres,* 443 F.Supp. 186, 191 (D. Conn. 1977); *United States* v. *Cooper, supra,* 428 F.Supp. at 654; *Reeves* v. *State,* 599 P.2d 727, 735–736 (Alaska 1979); *State* v. *Daniel,* 589 P.2d 408, 417 (Alaska 1979); *People* v. *Miller, supra,* 7 Cal.3d at 224; *Mozzetti* v. *Superior Court,* 4 Cal.3d 699, 707, 94 Cal.Rptr. 412, 484 P.2d

---

reasonable to invoke this rationale to sanction all routine inventories of all repositories of personal effects. Even with respect to those objects, such as wallets, which might contain identification, it is more reasonable to ask the arrestee to produce the identification since it is he who would know where in the wallet the identification is located. *See State* v. *Frazier,* 318 N.W.2d 42, 44, fn. 1 (Minn. 1982). In any event, there is no evidence in the record which suggests that the search here under review was conducted for the purpose of verifying respondent's identity.

84 (1971); *People* v. *Counterman, supra,* 556 P.2d at 485; *People* v. *Grana,* 185 Colo. 126, 527 P.2d 543, 545 (1974); *State* v. *Gwinn, supra,* 301 A.2d at 294; *State* v. *Kaluna,* 55 Haw. 361, 520 P.2d 51, 62 (1974); *People* v. *Helm, supra,* 431 N.E.2d at 1034; *People* v. *Bayles, supra,* 411 N.E.2d at 1353; *People* v. *Hamilton, supra,* 386 N.E.2d at 59; *People* v. *Bean,* 107 Ill.App.3d 662, 63 Ill. Dec. 373, 437 N.E.2d 1295, 1300 (1982); *People* v. *Salter,* 91 Ill.App.3d 831, 47 Ill. Dec. 136, 414 N.E.2d 1252, 1255 (1980); *Bradford* v. *State,* 401 N.E.2d 77, 80 (Ind.App. 1980); *State* v. *Potter,* __ Kan.App.2d __, 648 P.2d 1162, 1165 (1982); *State* v. *Morgan,* 3 Kan.App.2d 667, 600 P.2d 155, 159 (1979); *City of Danville* v. *Dawson,* 528 S.W.2d 687, 690–691 (Ky. 1975); *Smith* v. *State,* 48 Md.App. 425, 427 A.2d 1064, 1065 (1981); *People* v. *Miller,* 110 Mich.App.270, 312 N.W.2d 225, 228 (1981); *Obermeyer* v. *State,* 625 P.2d 95, 96–97 (Nev, 1981); *State* v. *Pace,* 171 N.J.Super. 240, 408 A.2d 808, 813 (1979), pet. for certification denied, 84 N.J. 384, 420 A.2d 314 (1980); *State* v. *Bramlett,* 94 N.M. 263, 609 P.2d 345, 347–348 (Ct.App. 1980); *State* v. *Hall,* 52 N.C.App. 492, 279 S.E.2d 111, 115 (1981); *State* v. *Bradshaw,* 41 Ohio App.2d 48, 322 N.E.2d 311, 318 (1974); *State* v. *Downes,* 285 Or. 369, 591 P.2d 1352 (1979); *State* v. *Keller,* 265 Or. 622, 510 P.2d 568, 570 (1973); *Commonwealth* v. *Timko,* 491 Pa. 32, 417 A.2d 620, 623 (1980); *State* v. *Houser,* 95 Wash. 2d 143, 622 P.2d 1218, 1226–1228 (1980); *State* v. *Prober,* 98 Wis.2d 345, 297 N.W.2d 1, 7 (1980); *State* v. *McDougal, supra,* 228 N.W.2d at 678; *State* v. *Goff,* 272 S.E.2d 457, 462, fn. 7 (W.Va. 1980); *see also United States* v. *Bosby,* 675 F.2d 1174, 1179–1180 (11th Cir. 1982); *United States* v. *Mills, supra,* 472 F.2d at 1240–1241 (rather than search a change purse, officers should have given defendant the option of posting collateral for a petty offense to avoid incarceration); *State* v. *Rome, supra,* 354 So.2d 504 (sug-

gesting that defendant should be allowed to make arrangements to avoid having car and its contents taken into custody).[21]

---

[21] Amicus recognizes that a smaller number of cases indicate that an inventory search of the contents of a repository of personal effects is permissible. These cases, however, either do not apply to the shoulder bag here under discussion, contain no analysis which balances the purposes of such searches against expectations of privacy, or are otherwise flawed in their reasoning.

Some cases, for example, are limited to their facts. *E.g., United States* v. *Markland, supra,* 635 F.2d at 175–177 (container was not true repository of personal effects and was unusually heavy, indicating potential danger); *Dearing* v. *State,* 393 N.E.2d 167, 173 (Ind. 1979) (officer had reason to believe suitcases contained a shotgun, and defendant asked police to take custody of them); *State* v. *Gelvin,* 318 N.W.2d 302 (N.D.), *cert. denied,* __*U.S.* __ (1982) (limited to inventory search of wallets); *State* v. *Roth,* 305 N.W.2d 501, 506–507 (Iowa, *cert. denied,* __ U.S. __ (1981) (inventory search of paper bag permissible because such an object is not like luggage); *State* v. *Crabtree,* 618 P.2d 484 (Utah 1980) as explained by *State* v. *Romero,* 624 P.2d 699, 702, fn. 1 (Utah 1981).

Other cases contain summary holdings rather than an analysis of whether the need for the search outweighs the privacy interests of the owner or, indeed, even whether such a search promotes the three purposes of inventory searches. *E.g., United States* v. *Rega,* 496 F.Supp. 101, 105 (S.D.N.Y. 1980); *Sumlin* v. *State, supra,* 587 S.W.2d at 577.

Finally, some cases are simply poorly reasoned. For example in *Boulet* v. *State,* 109 Ariz. 433, 511 P.2d 168, 171 (1973) the court states that it is necessary to inventory a container in order to safeguard it. The court fails to explain, however, why inventorying the object as a unit fails to achieve this goal.

In *State* v. *Gelvin, supra,* 318 N.W.2d 302, a case which is limited to wallets, *id.* at 305, the court ruled that it was difficult to secure a wallet as a unit by taping it. *Id.* at 306. The court failed to consider that the wallet could be sealed, *People* v. *Bean, supra,* 437 N.E.2d at 1300 or could be placed in an envelope. See *State* v. *Kaluna, supra,* 520 P.2d at 62.

In *Hamby* v. *Commonwealth,* 222 Va. 257, 279 S.E.2d 163, 166 (1981), the court stated that the epectation of privacy in luggage was no greater than the expectation of privacy in a glove compartment as in *Opperman. Hamby* ignores this Court's holding that luggage enjoys a greater expectation of privacy than does an automobile. *United States* v. *Chadwick, supra,* 433 U.S. at 13; *United States* v. *Ross, supra,* __ U.S. at __, 72 L.Ed.2d at 585.

But amicus does not simply rest his argument on the weight of the authority, on the fact that the purposes of inventory searches are better promoted by inventorying as a unit, or on the need to protect a citizen's privacy interests. There are other strong policy reasons which support amicus' position.

First, inventorying as a unit actually helps the police better perform their duties and affords more protection to the citizenry as a whole. Inventory searches are standard and routine practices. *See South Dakota* v. *Opperman, supra,* 428 U.S. at 375–376. They are governed by established procedures. *United States* v. *Jackson, supra,* 529 F.Supp. at 1055 (and cases cited). These procedures help assure that the inventory search will not be used as a pretext for an otherwise invalid search. *Hicks* v. *State,* 398 So.2d 1008, 1009–1010 (Fla.App. 1981). Such procedures necessarily apply to every object possessed by every arrestee. Assuming the procedures require the search of the *contents* of every such object, they place on police an onerous and time-consuming task which wastes their valuable and scarce resources. Amicus submits that a requirement that repositories of personal effects ordinarily be inventoried as a unit would allow police to devote more time and resources to productive law enforcement activity.

Secondly, inventorying as a unit sets forth a "straightforward rule." *See New York* v. *Belton, supra,* 453 U.S. at 459. That rule informs police precisely what to do in the course of a routine inventory and cautions them not to deviate from the rule unless they can articulate reasons for doing so.[22] Police will be sure of the scope of their authority and citizens will know "how a court will

[22] Amicus realizes that it might be argued that since inventory searches are routine procedures it would be anomalous to predicate them on the facts of the given case. *See, e.g.* Brief of the United States at 9, 22. Such an argument would misconceive amicus' argument. In the vast majority of cases repositories of personal effects would be inventoried as a unit. This would be the

apply a settled principle to a recurring factual situation." *Id.* at 459–60.

In this case reason and the weight of authority are in harmony. Reason dictates, and the majority of courts agree, that the purposes of inventorying are better served by inventorying repositories of personal effects as a unit. It is neither necessary nor prudent to sacrifice a citizen's expectation of privacy when doing so serves no purpose and when strong policy reasons dictate against it. Amicus therefore respectfully urges this Court to hold that it is unreasonable under the Fourth Amendment to inventory the contents of a respository of personal effects in the absence of circumstances which require such an inventory, and therefor to affirm the judgment.

CONCLUSION

Amicus respectfully submits that the judgment of the Illinois Appellate Court should be affirmed.

Respectfully submitted,

QUIN DENVIR
State Public Defender of California

GEORGE L. SCHRAER
Deputy State Public Defender
Attorneys for Amicus Curiae

RALPH H. GOLDSEN
Deputy State Public Defender
Of Counsel

February, 1983

---

routine procedure. Amicus simply realizes that there might be extraordinary circumstances under which police would be required to search the container, such as where they have reason to believe it contains explosives.